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ABSTRACT

The National School Boards Association's Council of Attorneys has designed this monograph to assist school attorneys and administrators involved in school construction projects to know how to select a qualified architect, understand the relationship between an architect and school district, and prepare to negotiate a contract with an architect. The focus is on negotiating amendments to standard form contracts produced by the American Institute of Architects (AIA). An overview of the AIA owner-architect agreement presents suggested substitutions and negotiations for all 12 articles: (1) Architect's Responsibilities; (2) Scope of Architect's Basic Services; (3) Additional Services; (4) Owner's Responsibilities; (5) Construction Cost; (6) Use of Architect's Drawings, Specifications and Other Documents; (7) Arbitration; (8) Termination, Suspension, or Abandonment; (9) Miscellaneous Provisions; (10) Payments to the Architect; (11) Basis of Compensation; and (12) Other Considerations or Services. How to attach a "rider" that sets forth deletions, amendments, and additions to the standard form agreement is explained. (EJS)

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An NSBA Council of School Attorneys Publication

CONTRACTING WITH ARCHITECTS: A SCHOOL DISTRICT'S PERSPECTIVE

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February 1991

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FOREWORD

The NSBA Council of School Attorneys is pleased to present **Contracting with Architects: A School District's Perspective**. This monograph is intended to assist school attorneys and administrators involved in school construction projects to 1) know how to select a qualified architect; 2) understand the relationship between the architect and the school district; and 3) be prepared to negotiate a contract with the architect.

This publication focuses in negotiating amendments to the standard form contracts produced by the American Institute of Architects, the most widely used and accepted forms in the construction industry. It helps the school attorney to recognize paragraph by paragraph the changes that should be considered in order to properly protect the vital interests of the school district and provides suggested modifications to the owner-architect agreement. Recommendations for corresponding changes to the general condition of the construction contract are also included. Finally, a sample rider is set forth.

The Council offers this publication as a useful guide to attorneys and administrators who negotiate contracts with architects, but it is not intended to be legal advice. A school district should consult competent legal counsel before taking any action with respect to selecting or contracting with an architect.

Finally, I wish to thank Michael Levin and the other committee members for the time, effort and expertise they contributed in writing this publication.

Donald B. Sweeney, Jr.
Chairman
NSBA Council of School Attorneys
February 1991

About the NSBA Council of School Attorneys . . . .

Since 1967 the National School Boards Association's Council of School Attorneys has provided information and practical assistance to attorneys who represent public school districts. As the only national advocacy organization composed exclusively of attorneys representing school boards, NSBA's Council advises NSBA and its members on school law issues. It offers continuing legal education programs, produces specialized publications, and provides up-to-the-minute analysis of the issues. Council seminars are valuable forums for school attorneys to exchange ideas and information.

Nearly 3000 attorneys, representing local school districts of all sizes, find membership in NSBA's Council of School Attorneys essential for keeping abreast of school law issues and trends. Attorneys in thirty-two states receive these benefits through membership in their state school attorneys' councils which have affiliated with the NSBA Council of School Attorneys. States with affiliated councils include: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and West Virginia.

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CONTRACTING WITH ARCHITECTS: A SCHOOL DISTRICT'S PERSPECTIVE, written by the Council's AIA Contract Committee chaired by Michael I. Levin, is a publication of the NSBA Council of School Attorneys. NSBA's Office of the General Counsel provides professional and executive staff support to the Council and its varied programming for school attorneys across the United States. For more information about the NSBA Council of School Attorneys, its publications, programs and membership, call 703/838-6722, or write NSBA, 1680 Duke Street, Alexandria, Virginia 22314.

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In addition to the committee members, I must thank Gus Steinhilber, General Counsel of the National School Boards Association, whose assistance expedited the publication of this monograph. I must also give recognition to my associate, Frank Clark, Esq., who assisted me in drafting many of the modifications recommended in this monograph. Finally, Reed Day, Esq., a highly respected and experienced school law practitioner in western Pennsylvania, contributed many suggestions based upon his unique experiences that certainly improved the final product.

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CONTRACTING WITH ARCHITECTS: A SCHOOL DISTRICT'S PERSPECTIVE

School districts across the nation regularly use the services of architects. It is therefore critically important that school districts (1) know how to select a qualified architect, (2) understand the nature of the relationship between the architect and the school district, and (3) be prepared to negotiate an appropriate contract with the architect. Each of these subjects will be reviewed in this monograph from the perspective of the school district.

Central to these subjects is the contract between the school district and the architect. This document ultimately defines the relationship between the parties. The willingness of the architect to accommodate the needs of the school district through appropriate provisions in the agreement should be considered in the selection of an architect. The agreement ensures, among other items, that the obligations of the parties are properly established and allocates various risks of the project between the architect and school district. As a matter of practicality, where the architect performs more services and assumes greater risks, the architect's fees will likely increase. Similarly, to the extent that the services and risks of the architect are minimized, and are consequently assumed by the contractor and/or the school district, fees should correspondingly decrease.

Before proceeding further into these topics, several disclaimers must be noted. First, the laws of individual states have not been reviewed and any specific suggestions or contractual provisions set forth herein may violate state law. Any action taken by a school district with respect to the selection of or contractual relationship with architects must be reviewed with school district counsel to ensure conformity with state law. Secondly, unusual or unique situations generally will not be addressed. For example, if a school district uses multiple prime contractors, provisions in addition to the ones discussed herein will be necessary. If a project has unique features, provisions which address those special features should be included in the agreement.

Selecting an Architect

The success of any building project largely depends on the capability of the architect. The capability of an architect must be measured in several ways — competency, fiscal viability, human resources and time and willingness to serve. Fiscal viability is important not only with respect to the ability of the architect to perform the work, but also from a liability standpoint should claims be made as a result of the architect's work. The capabilities of architects, using these standards, vary widely from firm to firm, and school districts must investigate these differences to ensure that the right architect is selected.

Except where state law establishes the procedure that must be utilized, school districts have fairly wide discretion in deciding how to select an architect. If state law does not provide otherwise, it is recommended that school districts request proposals and information from at least three firms and generally no more than five firms. School districts should ensure that in their selection they comply with any laws requiring that minority and women-owned firms are provided a meaningful opportunity to compete for and obtain architectural contracts. Among the information that the firms should be asked to provide is the following:

1. Firm name;
2. Addresses of all firm offices;

3. Telephone number;
4. Structure of firm, i.e., sole proprietorship, partnership, corporation;
5. Years firm has been in business;
6. Current financial statement and balance sheet;
7. Names of principals in firm;
8. Names of those in the firm who will be working on the project and copies of their licenses, registrations or certifications;
9. Educational and experiential background of principals and those who will be working on project;
10. Size of firm;
11. Qualifications for specific project;
12. Names of owners of similar projects who can be contacted as references;
13. Listing of the projects currently under contract;
14. Listing of any actions taken by any regulatory agency against or litigation involving the firm or its agents or employees with respect to any work performed;
15. All insurances that the firm has that would be applicable to the work; and
16. An explanation of how the firm provides quality control in each phase (schematic design, design development, construction documents, bidding or negotiation, construction) of the project.

After reviewing the proposals, a decision should be made as to which architects to interview. The persons who will be involved in the interview process may be drawn from the school board, the administration, and perhaps may include an educational consultant. A representative from the school district's business office should be part of the interview team because the business office will deal with the architect with respect to payments to the architect and to the contractor. If interviews are conducted, the architects should be advised reasonably in advance of the time of the interview and what will be expected at the interview. The interview should include a discussion of the following:

1. Information submitted with the proposals;
2. Nature and scope of the project;
3. Similar jobs in which the architect has been involved;
4. Time requirements for the job;
5. How the architect views his role during construction, i.e., as the owner's representative or as an impartial observer and what contractual provisions will describe the architect's role;
6. Capability of the architect to handle all aspects of the project;
7. Any amendments the school district will require to the standard form of agreement between the school district and the architect; and
8. The architect's fee schedule and estimated cost of services.

Once the foregoing information is obtained, owners who have previously used the architect's services should be contacted. Specific questions with respect to the following topics should be asked:

1. Accuracy of the architect in estimating both cost and timing;
2. Freedom of the architect's buildings from problems;
3. Freedom of heating and air conditioning systems from maintenance problems;
4. Promptness of the architect in responding to problems;
5. Efficiency of the architect in remedying problems;
6. Sufficiency of or any problems resulting from the bidding or construction documents;
7. Any regulatory agency citations against the architect or involvement in any disputes or litigation; and
8. The architect's record in producing designs and documents in a timely fashion.

The departments of education of some states maintain records on architects in the state. School districts should check any available records.

Finally, representatives of the school district may want to visit the architect's office to evaluate the architect's ability to perform the work.

The Relationship Between Architect and School District

The construction of a school is inherently an extremely complex process. It is further compli-

cated by the competitive relationships between and among the various parties involved in the project, some of whom may have been strangers to one another prior to the award of the construction contracts. In the best of circumstances, each is driven by a variety of impulses, including economic self interest and professional pride. In order for the project to be constructed successfully, however, the various parties must work as a team, and to a certain extent, compromise their individual interests for the common goal: to build the school on time in accordance with the plans and specifications set forth in the contract documents at or below the budgeted amount.

There are two principal views of the architect's role in this process. In the opinion of many owners, the architect represents the owner on the project. Although an independent contractor, the architect is considered in practical, if not legal, terms as the owner's agent. In the owner's view, the architect is employed to carry out the wishes of the owner.

Architects, however, often view their role differently. The standard contract documents from the American Institute of Architects, for example, in defining the role of the architect, owner and contractor, allocate responsibility (and therefore risk and liability) in such a way as to minimize the responsibility of the architect. During the construction phase, particularly, architects frequently consider themselves to be judges of the performance of both the owner and the contractor.

This tendency of architects to see their role less as the owner's representative on the project and more as an independent observer of the work has caused many owners to employ a construction manager or a clerk of the works. Architects also have created an economic demand for construction managers and clerks of the works by limiting the scope of their "basic" services and shifting services previously considered "basic" to "additional" services for which they charge an additional fee. School districts, therefore, must seriously consider the following issues as they begin their planning for a construction project:

1. Whether they want the architect to serve as a representative of the owner on the project or to serve more as a neutral party during the construction phase;
2. Whether they want to expand the scope of the architect's basic services;
3. Whether they want to assign school district staff and/or employ a clerk of the works to supervise the construction phase; and
4. Whether they want to employ a construction manager.

After answering these questions, the owner needs to discuss its perceptions of the role and responsibilities of the architect with the architectural firms it is considering for the project to ensure a mutual meeting of the minds. Some architects may be uncomfortable assuming a role aligned more toward the owner's interests and some may increase their fees substantially if they are asked to increase the scope of their basic services. Others may not.

All too often, owners do not consider these issues and do not discuss them with the architect. They do not read or adequately understand the terms and conditions of the AIA standard form agreement. They simply sign the form presented to them without a mutual agreement on the role and responsibilities of the architect. This can lead to later misunderstandings and expense.

The attorney for the school district must become familiar with the terms and conditions of the owner-architect agreement and advise the school district as to its contents. The attorney should ensure that the school district understands the role and responsibilities of the architect as set forth in the contract. If the owner is dissatisfied with the contract, the attorney should assist the owner in negotiating a new or amended contract with the architect.

Approaches to Negotiating an Architect's Agreement

Typically, very little in the way of actual "negotiation" occurs between owners and architects. Instead, once the parties agree on the principal areas of concern, the architect will submit a complete contract document, usually the form contract prepared by the American Institute of Architects. Only if the contract document is carefully reviewed and appropriate changes made, is there any actual negotiation with respect to most provisions contained in the contract document. If the usual scenario is played out, the school district will not be in a strong bargaining position to insist upon changes of significance. For example, any changes proposed by the school district that appear to increase the

architect's responsibilities will be met with a response that the architect agreed to the compensation package on the understanding that the added services would not be required.

To avoid that outcome, the school district can gain bargaining power by preparing its own contract document to be used with the architect before contacting any architects. Prospective architects should be given a copy of the contract with the request for proposals, and depending upon the negotiation style and objectives of the school district, advised either that only compensation and scheduling are subject to negotiation or that questions and proposed changes will be considered as part of the selection process. In essence, this differs little from contracting with contractors asked to bid on specific and detailed specifications. This approach offers the school district the best bargaining position and allows the school district to better compare competing architectural firms. Using this approach, the competing architectural firms will be submitting proposals on essentially the same set of services. School districts should keep in mind, however, that architects consider the expense of submitting a proposal. If massive changes in standard form contracts are prepared or if the school district's documents are specified, some architects may decline to submit a proposal, especially on smaller projects.

On July 5, 1990, the United States Department of Justice filed against the American Institute of Architects a civil anti-trust suit alleging that it unreasonably restrained price competition in the sale of architectural services. The complaint alleged that the AIA and co-conspirators entered into an unlawful agreement to prohibit AIA members from engaging in competitive bidding, discounting fees, or providing free services. A consent decree resolving the suit enjoins the AIA and its approximately 280 local and state components from having any code of ethics or statement that prohibits or restrains AIA members from engaging in competitive bidding, discounting, or providing free services or that states or implies that any of those practices are unethical, unprofessional, or contrary to any AIA policy. The consent decree should make it easier for school districts to negotiate changes to the standard form of agreement.

Approaches to Formulating the Terms of an Agreement

The agreement with the architect can be formulated in any number of ways. For those who thrive on reinventing the wheel, one can start from scratch. For the less ambitious, a number of excellent form contracts are available. Some states have developed standard form agreements for public construction contracts. The Association of General Contractors (AGC) has published a set of construction documents which includes an owner-architect agreement. The National Society of Professional Engineers and the American Society of Civil Engineers have produced the Engineers Joint Contract Documents (EJCD). However, the most widely used and generally accepted forms are those produced by the American Institute of Architects (AIA).

Unless state law provides otherwise, it is highly recommended that school districts begin with the AIA documents and make necessary changes by attaching a rider to the form contract. The advantages of beginning with the AIA documents are many:

a. Architects, contractors and the courts are familiar with the language of the AIA contract documents. There will generally be less confusion and misunderstanding of the terms and conditions of the contract. In addition, radical changes in the duties and responsibilities of the parties may increase the cost of the project or discourage firms from responding to the school district's request for proposals. Even if the owner does not intend to increase an architect's responsibilities, simply the risk of an adverse interpretation of the contract by the courts may cause the architect to raise his compensation to cover the increased risk exposure.

b. The AIA contracts are comprehensive. The AIA expends considerable time and effort developing its forms. Reviewed approximately every ten years, the forms are amended to reflect the state of the art in the construction industry in terms of both technology and the delivery of services, and to incorporate changes in the law. As a result, they address almost every contingency which could arise on a construction project.

c. The AIA contracts are a family of contracts. In 1987, the AIA published new editions of twelve different form agreements. Although each addresses a different contractual relationship, they are consistent with one another. While in general this is an advantage, an owner who wants to amend one of the agreements will have to locate, identify

and amend all similar clauses in each contract within the family of contracts.)

d. The AIA sought and received comments and suggestions from all interested parties within the construction industry, both owners and contractors, during the development of the 1987 editions of the standard forms. The AIA documents reflect, to a degree, the views of the different parties.

Although there is good reason to begin the development of the terms and conditions of the architect's agreement with the AIA documents, many important changes must be made to protect properly the vital interests of school districts. Changes are necessary because the AIA forms often favor the architect's position which may be at odds with that of the school district.

Analysis of the AIA Owner-Architect Agreement (AIA Document B141, 1987 Edition) and Suggested Amendments

Overview of the AIA Owner-Architect Agreement

The form AIA Owner-Architect Agreement is divided into 12 separate articles entitled as follows:

1. Architect's Responsibilities;
2. Scope of Architect's Basic Services;
3. Additional Services;
4. Owner's Responsibilities;
5. Construction Cost;
6. Use of Architect's Drawings, Specifications and other Documents;
7. Arbitration;
8. Termination, Suspension or Abandonment;
9. Miscellaneous Provisions;
10. Payments to the Architect;
11. Basis of Compensation; and
12. Other Conditions or Services

Article 1 essentially states that the architect will provide the services identified in the contract consistent with professional skill and care. Article 2 describes the services that will be provided by the architect as part of the architect's basic price and without additional charge. Article 3 describes those services that will be performed by the architect, but only for additional compensation. The additional services are generally divided into two kinds—services necessary due to circumstances beyond the control of the architect and services that may be requested by the school district, but which may not be necessary for the completion of the project. With respect to the former, they will be provided automatically by the architect and must be paid as an extra by the school district unless the school district promptly notifies the architect not to perform such services. As to the latter, the architect will perform the services only if requested by the school district.

Article 4 outlines the responsibilities of the owner. Generally, the owner is required to meet with the architect and provide the various kinds of information necessary to enable the architect to perform his job. Article 5 defines the "construction cost" of the project and is a necessary provision when the compensation of the architect is based upon the construction cost of the project and/or if provisions are added to the agreement as suggested hereinafter, requiring the architect to develop preliminary and final estimates of the "construction cost" as the project proceeds. Article 6, as its title implies, pertains to the use and ownership of the documents prepared by the architect and essentially states that the architect owns the documents and that the school district has few rights with respect to the documents. Article 7 compels the parties to resort to arbitration under the auspices of the American Arbitration Association should there be a dispute under the contract between the school district and the architect. Article 8 dictates the applicable rules for terminating or suspending the agreement, and Article 9 contains miscellaneous provisions dealing with such subjects as conflict of laws, statutes of limitations, integration, and the like.

Article 10 pertains to payments that will be made to the architect and the time when those payments are due; and Article 11 describes the basis for the architect's compensation. Generally, compensation is based upon either a percentage of the construction cost of the project or a stipulated sum. Finally, Article 12 is blank, providing the parties the space to insert additional provisions into the document.

The form employs a somewhat difficult numbering system. The provisions of the agreement are not numbered consecutively. Instead, a decimal system is used that separates divisions within each article and subsections within each division. The system produces section numbers in the following formats: 2.2.4 and 2.4.2 or 3.3.1.1 and 3.3.11. When

cross referencing or making modifications to the document, the numbering system must be carefully reviewed to avoid error.

Detailed Analysis of AIA Owner-Architect Agreement (AIA Document B141, 1987 Edition) and Suggested Modifications

From the perspective of school districts, the AIA owner-architect agreement requires change. What follows will be a section-by-section discussion of those provisions where change or modification is suggested. Following the discussion of each section where changes are proposed will be one or more recommended provisions amending, substituting, or adding to the AIA standard form of agreement.

Where suggestions are made to modify existing provisions, recommended deletions will be placed in brackets and recommended additions will be underscored. Where provisions of the standard form of agreement are not referenced, no modifications or changes are recommended.

ARTICLE 1: ARCHITECT'S RESPONSIBILITIES

Article 1 of the standard form of agreement serves both as an introduction to the agreement and as a substantive section. It contains a requirement that the architect submit to the owner for approval a schedule for the performance of the architect's services. This provision is weakened, however, by allowing the schedule to be adjusted "as the Project proceeds" without stating how such adjustments are to be made. It is recommended that paragraph 1.1.2 be amended to state that adjustments in the architect's schedule may be made in writing by mutual agreement of the parties.

SUGGESTED SUBSTITUTION:

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted <u>in writing by mutual agreement of the parties</u> as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

An apparent omission in the AIA form is a reasonably clear statement of the standard of performance expected of the architect. Paragraph 1.1.2 infers a standard of ordinary professional skill and care. School districts should add a new paragraph to Article 1 which establishes the highest standards of professional performance by the architect.

SUGGESTED ADDITION:

<u>1.4 The Architect will follow the highest standards of the profession in performing all services under this Agreement.</u>

ARTICLE 2: SCOPE OF ARCHITECT'S BASIC SERVICES

Paragraph 2.1.1 defines the scope of the architect's basic services as those stated in the document plus those identified in Article 12, a blank section of the form for adding additional services to the basic services. This paragraph also limits the scope of engineering services provided by the architect to "normal, structural, mechanical and electrical engineering services." Because controversy may arise as to what constitutes "normal" engineering services, it is recommended that the paragraph be amended to require the architect to provide those engineering services necessary to produce a reasonably complete and accurate set of construction documents. If other engineering services are required beyond what the architect considers "normal," they can be specifically listed and priced in Article 12.

SUGGESTED SUBSTITUTION:

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services [.] <u>and any other engineering services necessary to produce a reasonably complete and accurate set of Construction</u>

Documents, as described in Paragraph 2.4, except those engineering services provided by the Owner as set forth in Paragraph 4.6.1.

Paragraph 2.2.1 begins the description of the architect's duties during the schematic design phase of the project. The paragraph merely requires that the architect "review" the program furnished by the owner to ascertain the requirements of the project. It is suggested that the architect both review and analyze the program. Under the AIA form contract, providing analyses of the owner's needs and programming requirements is an "additional service" triggering additional compensation to the architect. By stating in paragraph 2.2.1 that the architect shall analyze the program, such services will be provided to the school district at no extra cost as part of the "basic services." It is also suggested that the architect be required in Paragraph 2.2.1 to commit an understanding of the owner's programming requirements to writing and to submit a copy to the owner for approval before proceeding with drafting preliminary designs.

SUGGESTED SUBSTITUTION:

2.2.1 The Architect shall review and analyze the program furnished by the Owner to ascertain the requirements of the Project, [and] shall arrive at a mutual understanding of such requirements with the Owner, shall commit such understanding to writing, and shall furnish a copy to the Owner for approval before proceeding with preliminary designs.

Paragraph 2.2.4 fails to state that the design documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations. Architects contend that such an omission at this preliminary stage of the design is of no moment because there is plenty of time later in the process to ensure that designs comply with regulatory requirements. However, from the perspective of the school district, there is little reason why compliance with applicable requirements should not be insisted upon even at this stage of the design. Subsequent attempts to bring the project into compliance with law may result in additional or unanticipated expense to the school district.

The idea expressed in paragraph 2.2.4 that the owner gives "approval" to the schematic design documents may lead some to argue that such approval precludes the owner from later asserting a claim against the architect should it be determined that the design was defective or legally deficient. Consequently, it is recommended that language be added to limit the meaning and significance of the owner's approval.

Many suggest that the architect should at this point in the project develop a preliminary statement of the estimated "construction cost," as that phrase is defined in Article 5 of the agreement. The availability of such a preliminary estimate will assist the planning and budgeting process of the school district.

SUGGESTED SUBSTITUTION:

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, (1) for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of the Project components and (2) for review by the Owner, a preliminary estimate of the "Construction Cost" as that phrase is defined in Paragraph 5.1.2.3 of this Agreement. The Design Documents shall comply with all applicable laws, statutes, ordinances, codes, orders, rules, and regulations in force as of the date of the development of the documents. Approval by the Owner shall be deemed to be approval of the concept though not the means, techniques or particular material recommended by the Architect.

Energy costs and efficiency are important cost considerations. The AIA agreement does not require the architect to provide an analysis of the energy costs associated with the project. To the extent that the school district believes such analysis should be provided by the architect, it is recommended that a paragraph be added at 2.3.3.

SUGGESTED ADDITION: Alternative #1

2.3.3 The Architect shall submit to the Owner an analysis of the total estimated energy necessary to operate the Project properly during a normal or average year. This analysis shall include the estimated energy necessary to heat, cool and light the Project and to operate the equipment essential to both the Project and

the Program. The total annual estimated energy need shall then be translated into cost estimates by type of energy based on current cost of each type of energy, i.e., electricity, coal, oil, natural gas, LP gas, etc., for each facility of the Project. The Owner and Architect agree that the actual energy cost and the estimated energy cost may vary due to the Owner's usage of the energy system, weather conditions and increases in energy costs. The Architect shall not be responsible or held legally liable for reasonable variations between the estimated and actual energy costs.

SUGGESTED ADDITION: Alternative #2

2.3.3 The design of the Project will provide for energy efficient structures that will produce average monthly costs not to exceed $ per month at present rates at normal room temperatures, normal lighting and other electrical needs.

Paragraph 2.4.1 begins the contractual provisions pertaining to the construction document phase of the agreement. Based upon the approved design development documents and any adjustments in them authorized by the school district, the architect is required to prepare, for the owner's approval, the construction documents. At this point, it is suggested that the school district amend the contract to address the selection and employment of engineering services.

It is the duty of the architect to select engineers qualified by training and experience in the respective fields to address the specific requirements of the project. The architect should be required to submit to the school district for approval, not to be unreasonably withheld, a list of the engineers to be employed on the project. Although most owners are not in a position to assess the qualifications of various engineers, a school district may have had a bad experience with an engineering firm which it does not want to repeat. Further, the school district should require the architect to ensure that each engineer places his seal, name and signature on those drawings and specifications prepared by him. In addition, the architect should warrant that the construction documents will be in accordance with applicable law, standards, and the like.

SUGGESTED SUBSTITUTION:

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project[.], including, but not limited to, the work required for the architectural, structural, mechanical, electrical, plumbing, service-connected equipment, and site work, and the necessary general conditions of the contract. The Architect shall provide the services of professional structural, mechanical, civil, electrical and other engineers, qualified by training and experience in their respective fields, as needed, to address the requirements of the Project; shall submit a list of the names of the engineers to be employed by the Architect to the Owner, in advance, for the Owner's review and approval, which approval shall not be unreasonably withheld, and shall require such professional engineers to place their seal, name and signature on the Drawings and Specifications prepared by them. Said Construction Documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations. Approval by the Owner shall not constitute approval of the means, techniques or particular material recommended by the Architect for the Project.

Paragraph 2.4.2 states that the architect is simply required to "assist" the owner in the preparation of bidding information and forms. In actual practice, the architect generally is primarily responsible for the preparation of bidding information and bidding forms. The contract should be amended to reflect that the architect bears this responsibility. In some areas, the general contractor, not the owner or architect, customarily files necessary documents and obtains permits and the like. Where appropriate, the contract documents should be modified to reflect the practice. Furthermore, where the school district requires a preliminary estimate of the "construction cost" as suggested in the discussion pertaining to paragraph 2.2.4, it is recommended that this paragraph be amended to require the architect to provide final estimates of the "construction cost."

SUGGESTED SUBSTITUTION:

2.4.2 The Architect, after consultation with the Owner, shall [assist the Owner in the preparation of] prepare the necessary bidding information, bidding forms, the Conditions of the Contract, a final estimate of the Construction Cost as defined in Paragraph 5.1.2.3 of this Agreement, and the form of Agreement between the Owner and Contractor, subject to the review and approval of the Owner's legal counsel.

Paragraph 2.4.4 describes the architect's duty as "assisting" the owner in connection with filing documents required for approval of governmental authorities. Because many school district administrators may not know what documents must be filed, or where to file them, it is suggested that this paragraph be amended to require the architect, with the assistance of the school district, to be responsible for filing documents required for approval of various governmental authorities. Where reviewing authorities may require or recommend changes, those approved by the owner should be made by the architect with no additional cost to the school district.

SUGGESTED SUBSTITUTION:

2.4.4 The Architect shall [assist the Owner in connection with the Owner's responsibility] be responsible, with the assistance of the Owner, for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall be responsible for making such changes in the Construction Documents as may be suggested by said governmental authorities at his expense when instructed to do so by the Owner.

The standard form AIA agreement omits any requirement that the architect ensure that the contractor provide operation manuals and adequate training for the owner in the operation of mechanical, electrical, heating and air conditioning systems installed by the contractor. It is recommended that such an obligation be set forth in a new paragraph to be added at paragraph 2.4.5.

SUGGESTED ADDITION:

2.4.5 The Architect shall include in the bidding information, plans or specifications, a requirement that the Contractor(s) provide operation manuals and adequate training for the Owner in the operation of mechanical, electrical, heating and air conditioning systems installed by the Contractor(s).

A vital addition to the contract, especially where the architect is being compensated on a percentage basis, is a provision stating that if the lowest bid (or bids) exceeds the budget for the project (or exceeds the budget by a certain percentage), or exceeds the final estimates required to be provided as recommended with respect to paragraph 2.4.2 (or exceeds the final estimates by a certain percentage), the architect, in consultation with and at the direction of the school district, shall provide such modifications in the contract documents as necessary to bring the cost of the project within its budget or final estimates. By adding this provision within the architect's basic services, the architect would have to provide these services at no additional charge. Without such a provision, especially where the architect's fee is based upon a percentage of the construction cost, it could be to the architect's advantage to produce a set of plans which increases construction costs. By requiring estimates in conjunction with a provision mandating revisions at no extra cost to the school district where bids exceed the estimates, more accurate estimates are likely to be obtained. Although the school district's budget and the architect's estimates will often be the same, it is possible that the estimates may be less than the budgeted amounts.

SUGGESTED ADDITION:

2.5.2 In the event the lowest responsible bid (or bids) exceeds either the funds appropriated for the Project or the final estimates provided by the Architect pursuant to Paragraph 2.4.2 of this Agreement, the Architect, in consultation with and at the direction of the Owner, shall provide such modification in the Contract Documents as shall be necessary to bring the cost of the Project within the Project's budget as established by the Owner or the Architect's final estimates, as the Owner shall determine.

Several provisions in the AIA standard form of agreement deal with the time during which the architect is required to perform "basic services." Paragraph 11.5.1 of the agreement provides that basic services will be provided for a specific period of time as agreed upon by the parties, usually ex-

pressed in the number of months that the parties believe is necessary for the completion of the project. Under that provision, any services performed outside the agreed upon period will be billed as extras even if the nature of the service is such that it would otherwise be considered a basic service. However, paragraph 2.6.1 effectively modifies paragraph 11.5.1 by stating that the construction phase of the contract terminates at the earlier of the issuance of the final certificate of payment or sixty (60) days after the date of substantial completion of the work. Because of the wording of paragraph 2.6.1, the architect's obligation to provide basic services at no additional cost to the school district could possibly expire before the intended term of the agreement as expressed in paragraph 11.5.1. Little if any rationale supports such a provision, thus, paragraph 2.6.1 should be amended to provide that basic services do not terminate until the architect issues the final certificate for payment to the owner or the period set forth in paragraph 11.5.1 expires.

SUGGESTED SUBSTITUTION:

2.6.1 Subject to the time limitations set forth in Paragraph 11.5.1, the Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the awarding of [the] any Contract for Construction and terminates at the [earlier] later of the issuance to the Owner of the final Certificate for Payment [or 60 days after the date of Substantial Completion of the Work] to all Contractors, issuance of a certificate of occupancy, or submission of record drawings, unless extended under the terms of Paragraph 10.3.3.

As noted above, one of the advantages of using the AIA forms is that there is a family of forms for use with the various parties to the construction project. However, change to one member of the family of forms will require change to the other members at appropriate places. The need and authority for such change must be reflected in various provisions, including paragraphs 2.6.2 and 2.6.3.

SUGGESTED SUBSTITUTION:

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, [unless otherwise provided in this Agreement] as may be amended by the Owner.

2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect [with consent of the Contractor, which consent shall not be unreasonably withheld] and notice to the Contractor.

As discussed earlier, opinions differ as to the role of the architect and the relationship of the architect to the school district. Paragraph 2.6.4 states that the architect represents the owner; however, the provision seems to indicate that the architect represents the owner only until final payment to the contractor is due and that the architect's role assumes some different and unidentified characteristic after final payment is due to the contractor. The paragraph should be appropriately modified.

SUGGESTED SUBSTITUTION:

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner. Instructions to the Contractor(s) shall be forwarded through the Architect.[(1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction.] The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

Paragraph 2.6.5, one of the most important provisions of the agreement, establishes the architect's duty to visit the site at appropriate intervals; to observe or inspect the work of the contractor; and to determine if the work is being performed in accordance with the contract documents. However, the provision is somewhat nebulous and restricts the scope of the architect's duties and legal liability. Significant changes must be made to the paragraph to remove unwarranted ambiguity.

The following suggested substitution represents a major revision of paragraph 2.6.5 of the standard form of agreement and some architects may object,

preferring the word "observations" to the word "inspections" and maintaining that the contractor rather than the architect has the responsibility to complete the work in accordance with the contract documents. If the school district desires someone to represent its interests during the construction phase, the following wording is necessary. If these changes are not made, the school district should be certain that adequate supervision and inspection is undertaken at its expense or by its own employees or agents.

SUGGESTED SUBSTITUTION:

2.6.5 The Architect shall visit the site [at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents.] not less than once per week while Work is in progress, and as often as necessary and appropriate to the stage of construction (with particular emphasis on structural work) to inspect the site and Work; to familiarize himself with the progress and quality of the Work; and to determine for the Owner's benefit and protection if the Work is proceeding in accordance with the intent of the Contract Documents and construction schedule. The Architect shall attend all construction progress meetings in conjunction with or in addition to visiting the site in satisfaction of other responsibilities. The Architect shall use reasonable care to guard the Owner against defects and deficiencies in the Work and the Contractor's failure to carry out the Work in accordance with the Contract Documents and the construction schedule. [However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.] On the basis of his on-site observations and inspections as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall [endeavor to guard the Owner against defects and deficiencies in the Work] give prompt notice to the Owner in writing of any major or material deviations from the Contract Documents in the Work. The Architect shall provide services made necessary by major defect or deficiencies in the Work of the Contractor which through reasonable care should have been discovered by the Architect and promptly reported to the Owner and Contractor(s) but which the Architect failed to discover and/or report.

Paragraph 2.6.6 provides that the architect is not responsible for construction means, methods, techniques, sequences and procedures. However, the standard form of agreement goes too far in stating that these functions are solely the responsibility of the contractor, thus necessitating appropriate modifications to tone down the disclaimers of the architect.

SUGGESTED SUBSTITUTION:

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, [since these are solely the Contractor's responsibility under the Contract for Construction]; except to ensure that the Work is in accordance with the Contract Documents all as set forth in Paragraph 2.6.5 hereof. Except as provided in this Agreement, the Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents.[The Architect] and shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

Under the many provisions describing the architect's basic services, the architect has a variety of duties. However, nothing in the agreement sets forth the responsibilities of the architect should the architect breach his obligations. Therefore, the following provision should be added to the standard form of agreement making it clear that the architect will provide additional services at no cost to the school district in order to cure any defects he has caused.

SUGGESTED ADDITION:

2.6.6.1 The Architect shall provide services made necessary by major defects or deficiencies in the work of the Contractor(s) or their agents or employees which through reasonable care the Architect should have discovered and promptly reported to the Owner but failed so to do. In addition, the Architect represents that he will follow the highest standards of the profession in performing all services under this Agreement. Any defective designs or Specifications furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the Owner's rights.

Paragraph 2.6.7 of the agreement gives the architect access to the Work. The implied right of access to the Owner should be expressly stated.

SUGGESTED SUBSTITUTION:

2.6.7 Both the Owner and the Architect shall at all times have access to the Work wherever it is in preparation or progress.

Paragraph 2.6.8 requires that the owner and the contractor communicate through the architect. As a general proposition, such a requirement serves many important purposes and should generally be maintained. However, for practical reasons, there may be times when the requirement cannot be fulfilled. It is suggested that modifications be made to recognize such contingencies and to define the obligations of the parties when such contingencies occur.

SUGGESTED SUBSTITUTION:

2.6.8 The Owner and Contractor shall communicate through the Architect; except (1) as may otherwise be provided in the Contract Documents, [or] (2) when direct communications have been [specially] specifically authorized, [the Owner and Contractor shall communicate through the Architect.] or (3) when such communication has been attempted and could not reasonably be accomplished in a timely manner in consideration of the requirements of the Project. Where direct communication between Owner and Contractor has occurred, the Owner and Contractor shall promptly and jointly document the nature and result of the communication as well as the reason for the direct communication and shall provide a copy of said documentation to the Architect. Communication by and with the Architect's consultants shall be through the Architect.

Paragraph 2.6.9 of the standard form of agreement obligates the architect to review the contractor's applications for payment. The provision does not obligate the architect to take into account the contractor's performance when determining the amounts due. The paragraph should be amended to cure this deficiency.

SUGGESTED SUBSTITUTION:

2.6.9 Based on the Architect's observations, inspections of the Work, and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor. Said review and certification shall be completed within ____ days of the Architect's receipt of the Application.

Paragraph 2.6.10 describes the architect's duties with respect to the issuance of certificates for payment. Consistent with the amendments suggested with respect to paragraph 2.6.9, the architect's certification should be based on his inspections as well as his observations of the work site. The provision should more clearly state that the architect's certificate should be based on the architect's actual knowledge of the quality of the work.

SUGGESTED SUBSTITUTION:

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's inspections and observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated, [and] that [,to the best of the Architect's knowledge, information and belief,]

the quality of the Work is in accordance with the Contract Documents and that the Work has been performed in a good and workmanlike fashion. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has [(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2)] reviewed construction means, methods, techniques, sequences or procedures [,(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment] or [(4)] ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

Paragraph 2.6.11 of the standard form of agreement provides that the architect has the "authority" to reject work by the contractor that does not conform to the contract documents. The provision should be strengthened to require the architect to reject such work unless the work is acceptable to the school district.

SUGGESTED SUBSTITUTION:

2.6.11 Where Work does not conform to the Contract Documents, the Architect shall [have authority to] promptly notify the Owner of the Architect's intent to reject such Work and shall reject nonconforming Work unless the Owner stops the Architect in writing within twenty-four (24) hours of being notified.[which does not conform to the Contract Documents.] Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. Where such additional inspection and testing is to be at additional cost to the Owner, such additional inspection and testing is to be required by the Architect only upon advance notice and approval by the Owner. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

The architect's duty to review and approve the contractor's submittals such as shop drawings is described in paragraph 2.6.12. The exculpatory language contained in that paragraph should be deleted. The purpose of the architect's review and approval would then be clearly stated "for the purpose of checking conformity with the contract documents and applicable laws, statutes, ordinances, codes, rules and regulations."

SUGGESTED SUBSTITUTION:

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples [,but only] for the [limited] purpose of checking for conformance with [information given and the design concept expressed in] the Contract Documents and all applicable laws, statutes, ordinances, codes, rules and regulations. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval

of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

Paragraphs 2.6.15 and 2.6.16 represent additional provisions that reflect the confusing description of the role of the architect in the standard form of agreement. These paragraphs purport to give the architect the authority to "decide" matters concerning the performance of the school district as well as the performance of the contractor and to prohibit the architect from showing partiality to the school district. These provisions conflict with the notion that the architect represents the school district and should make decisions for the district's benefit.

SUGGESTED SUBSTITUTION:

2.6.15 The Architect shall interpret and decide matters concerning performance of the [Owner and] Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by [both Owner and] the Contractor [, shall not show partiality to either,] and shall not be liable for results of interpretations or decisions so rendered in good faith and without negligence.

Paragraph 2.6.17 makes the architect the final authority with respect to aesthetic effect. If the school district desires to maintain final authority, this paragraph must be amended.

SUGGESTED SUBSTITUTION:

2.6.17 [The Architect's decisions on matters] The Owner shall have final authority on questions relating to aesthetic effect, [shall be final if] provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.

Paragraph 2.6.19 concerns arbitration of disputes. If the school district prefers not to refer disputes to arbitration, this provision should be deleted.

Before leaving Article 2, the school district should consider whether to identify additional items as basic services. Obviously, the more services placed in Article 2 as part of the basic services, the higher the architect's basic fee. With that caveat, a school district should consider adding the following provisions to the list of basic services.

SUGGESTED ADDITIONS:

2.6.20 The Architect shall provide services to investigate existing conditions or facilities or to make measured Drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.

2.6.21 The Architect shall provide coordination of construction performed by separate Contractors or by the Owner's own forces and coordination of services in connection with construction performed and equipment supplied by the Owner, including establishing and conducting a regular schedule of monthly meetings between Contractors and the Owner. Such monthly meetings shall be held throughout the entire Construction Phase of the Project and shall be for the primary purpose of assessing the progress of the Work of each Contractor and recommending to the Owner such remedial actions as are necessary to ensure required progress and completion in accordance with the construction schedule and within contract time. The Architect shall submit to the Owner and to the Contractors a full report of each such meeting as soon after the meeting as is practical.

2.6.22 The Architect shall be prepared to serve and shall serve when requested by the Owner as a witness in connection with any public hearing, arbitration proceeding, legal proceeding or administrative law proceeding to which the Owner or the Architect is a party concerning the Project as part of his Basic Services.

2.6.23 The Architect shall prepare or provide a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor(s) to the Architect including, but not limited to, the location of water, sewer, telephone, electric, gas and any other utility lines. Both the Architect and Contractor shall certify these drawings as accurate.

2.6.24 The Architect shall provide services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

2.6.25 The Architect shall provide services in evaluating claims submitted by the Contractor or others in connection with the Work.

2.6.26 The Architect shall provide analysis of the Owner's needs and program the requirements of the Project.

2.6.27 The Architect shall provide services to investigate existing conditions or facilities or to make measured Drawings thereof.

2.6.28 The Architect shall provide services to verify the accuracy of Drawings or other information furnished by the Owner.

2.6.29 The Architect shall provide coordination of construction performed by separate Contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

2.6.30 The Architect shall provide detailed estimates of Construction Cost.

2.6.31 The Architect shall prepare a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, Drawings and other data furnished by the Contractor to the Architect.

ARTICLE 3: ADDITIONAL SERVICES

Article 3 of the 1987 edition of the standard form of agreement contains one of the major structural changes of the form agreement from the earlier 1977 edition. The article divides additional services into three categories:

1. Representation beyond basic services;
2. Contingent additional services; and
3. Optional additional services.

This section on "Project Representation Beyond Basic Services" is not new. Although it raises a legitimate question of how much on-site representation is actually provided or required without the purchase of these additional services, it does provide a reasonable alternative to the employment of a construction manager for those owners who desire that a representative of the owner be on the site on a daily basis, a situation which is not normally necessary.

The division of the other additional services into "contingent" and "optional" is a significant change. Generally, contingent additional services are made necessary or desirable by an unforeseen event or some change in circumstances arising after the formation and execution of the agreement. In the opinion of the AIA, most owners should want and should expect to pay an additional fee for these services. Optional additional services, as the name implies, are purely optional. As a matter of style, the standard form simply lists the contingent and optional services without using complete sentences.

Consistent with the AIA notion of contingent additional services being services which the owner ought to want, paragraph 3.1.1 establishes a procedure which simply requires the architect to notify the owner prior to commencing a contingent additional service. The owner must then notify the architect in writing if the owner does not want the architect to provide the service. No time period is specified in the agreement for this notice and response. Although the procedure may be acceptable,

it is suggested that the school district require written notification from the architect advising the school district of the need for the service prior to its commencement. Furthermore, additional services that become necessary only through the fault or negligence of the architect should be performed at no additional cost. This notion should be expressly set forth in the contract.

SUGGESTED SUBSTITUTION:

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified elsewhere in this Agreement as being included in Basic Services [in Article 12], and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized [or confirmed] in advance in writing by the Owner. If, in the opinion of the Architect, services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall [notify] advise the Owner of the need for those services in writing prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services. If, however, services described under Paragraph 3.3 are required due to circumstances within the control of the Architect, such services shall be provided as a part of Basic Services. Notwithstanding any provision to the contrary, no compensation shall be paid to the Architect for additional services that became necessary as a result of the fault or negligence of the Architect or his agents or employees.

Paragraph 3.2.3 provides that the project representative shall "endeavor" to provide certain protections for the owner. It is suggested that the agreement should be modified to require the project representative to provide those protections.

SUGGESTED SUBSTITUTION:

3.2.3 Through the observations by such Project Representatives, the Architect shall [endeavor to] provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

Paragraph 3.3.1 of the standard form of agreement makes it a contingent additional service whenever the architect must make revisions in drawings, specifications and other contract documents. However, minor changes in the drawings and specifications of a project are more the norm than the exception. In order to protect the school district from excessive claims for additional fees under the provisions of this paragraph, the school district should consider inserting the word "material" in front of the word "revisions" in the first line of the paragraph.

SUGGESTED SUBSTITUTION:

3.3.1 Making material and substantial revisions in Drawings, Specifications or other documents when such revisions are:

1. inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
2. required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
3. due to changes required as a result of the Owner's failure to render decisions in a timely manner.

Under paragraph 3.3.2, the architect is entitled to an additional contingent fee for services required because of significant changes in the project. Paragraph 3.3.3 requires additional compensation for contingent additional services needed as a result of change orders and construction change directives. These paragraphs could permit "double dipping" where the architect's fee for basic services is based on a percentage of the construction cost and the change in the project or change orders result in a

significant increase in the construction cost, and therefore the architect's fee for basic services. By the same token, if the significant change in the project renders substantial prior work of the architect worthless, it is not as clear that there is "double dipping" even when the construction cost rises from the change. Consequently, the standard form of agreement should be modified to prevent "double dipping", but to allow reasonable compensation for professional services rendered by the architect.

SUGGESTED SUBSTITUTION:

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5; provided, however, that where said services are made necessary because of the significant increase in the size, quality, or complexity of the Project which results in a significant increase in the Construction Cost and, therefore, the Architect's fee for Basic Services, which fee is commensurate with the services required of the Architect, this provision shall not apply.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, [evaluating Contractor's proposals,] and providing other services in connection with Change Orders and Construction Change Directives when the adjustment in the basic compensation resulting from the adjusted Construction Cost is not commensurate with the services required of the Architect.

Several paragraphs in Article 3 of the standard form of agreement arguably should be placed in Article 2. Among those provisions are paragraphs 3.3.4 (substitutions proposed by the contractor); 3.3.7 (claims made by contractor and others); 3.4.1 (evaluation of needs of project); 3.4.6 (investigating existing conditions); 3.4.7 (verifying drawings); 3.4.8 (coordinating construction); 3.4.10 (detailed estimates) and 3.4.16 (changed drawings). These paragraphs should be deleted from Article 3 and set forth in Article 2. Paragraph 3.3.8, on the other hand, should be amended to provide that the architect will attend public meetings or hearings as part of the basic services.

SUGGESTED SUBSTITUTION:

3.3.8 Providing services in connection with [a public hearing,] an arbitration proceeding or legal proceeding except where the Owner or Architect is a party thereto.

Paragraph 3.4.18 needs to be amended to be consistent with paragraph 2.6.1 relating to the point in time when basic services end and additional services begin, i.e., after the issuance of the final certificate for payment, except as provided in section 11.5.1.

SUGGESTED SUBSTITUTION:

3.4.18 Providing services after the issuance to the Owner by the Architect of the final Certificate for Payment, [or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work] except as provided by Subparagraph 11.5.1.

ARTICLE 4: OWNER'S RESPONSIBILITIES

Succinctly stated, under the standard form of agreement, the owner is responsible for providing information about the project to the architect, establishing a budget for the project, appointing a representative authorized to act for him, furnishing surveys and property descriptions, furnishing geo-technical engineering services to conduct soil tests, paying for various structural, mechanical, chemical, air and water pollution tests, and furnishing legal, accounting and insurance services.

More specifically, paragraph 4.1 requires the owner to provide "full information" regarding the requirements for the project to the architect. Some feel that this provision exaggerates the owner's responsibilities. Depending upon the capacity of the owner's staff to comply with paragraph 4.1 and in consideration of liability issues, the owner may leave it as written or may wish to amend the paragraph to state that the owner shall "consult with the architect."

SUGGESTED SUBSTITUTION:

4.1 The Owner shall [provide full information regarding] with the Architect's assistance iden-

tify requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

Paragraph 4.7 of the standard form of agreement requires the owner to provide tests for hazardous materials. Such a provision would be inconsistent with the purpose of the agreement if the architect is being specifically retained to inspect or test for hazardous materials such as asbestos. In that event, the paragraph should be deleted or amended to reflect the purpose of the contract.

Paragraph 4.10 requires the owner to give the architect prompt written notice if the owner becomes aware of any defect in the project. This duty should be qualified by stating that the owner's failure to so notify the architect does not relieve the architect of any of his duties under the contract.

SUGGESTED SUBSTITUTION:

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, but the Owner's failure or omission to do so shall not relieve the Architect of his responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation.

ARTICLE 5: CONSTRUCTION COST

Article 5 of the standard form of agreement defines the phrase "Construction Cost". It is relevant only if the architect's fee for basic services is based on the construction cost of the project or if the architect is required to provide preliminary and final estimates of the construction cost as defined in Article 5. In the absence of either of these features, Article 5 should be deleted in its entirety from the form. If the architect's fee is based on the construction cost, Article 5 should be retained, but amended. Specifically, because the project might be terminated at any point, the phrase "construction cost" should be defined during each phase of the project.

SUGGESTED ADDITION: Alternative #1

5.1.2.1 During the Schematic Design, Design Development and Construction Document Phases, Construction Cost shall be determined by the Owner's budget for the Project.

5.1.2.2 During the Bidding and Negotiation Phase, Construction Cost shall be determined by the lowest responsible bid or bids.

5.1.2.3 During the Construction Phase, Construction Cost shall be determined by the Contract Sum as stated in the Owner-Contractor Agreement, as amended by any Change Orders formally approved by the Owner and Contractor.

SUGGESTED ADDITION: Alternative #2

5.1.2.1 Prior to the Construction Phase, Construction Cost shall be the Architect's Estimated Cost. During Construction Phase, Construction Cost shall be determined by the Contract Sum as stated in the Owner-Contractor Agreement, as amended by any Change Orders formally approved by the Owner and Contractor.

ARTICLE 6: USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

This article is intended to establish the architect's ownership and complete authority to control and to limit the future use of the documents he develops for a project. Architects appear to have two principal reasons for claiming ownership of these documents, one economic and one legal. Economically, architects want to ensure that owners employ their services each time the owner constructs a new project rather than simply using again the same set of plans for another project. Legally, architects fear the potential legal liability which might result from an owner using an old set of plans for a new project. To a certain extent, both reasons are valid.

Owners, on the other hand, often feel that they have purchased the architect's plans, and therefore, have obtained all incidents of ownership relative to them. These differing perceptions need to be resolved in some way in order to meet the legitimate interests of each party.

The parties should work out a compromise. The following suggestions illustrate two different approaches. The first alternative permits the architect to retain ownership, but gives the school district the right to retain and use the documents for its legitimate needs. The second alternative vests ownership in the school district, but protects the architect from liability should claims be made against the architect as a result of the school district's use of the documents in a manner unrelated to the project. If the second approach is used, the original language of paragraph 6.1 would be deleted entirely.

SUGGESTED SUBSTITUTION: Alternative #1

6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including copyright[.]; provided, however, that the Owner shall be permitted to retain and make copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information, [and] reference and use, in connection with the Owner's use and occupancy of the Project; [The Architect's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects,] for additions to the Project; or for completion of the Project by others [,unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect].

SUGGESTED SUBSTITUTION: Alternative #2

6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are the property of the Owner who shall be vested with all common law, statutory and other reserved rights; provided, however, that the Owner will indemnify and hold the Architect harmless in the event the Owner uses such documents for purposes other than this Project.

ARTICLE 7: ARBITRATION

Most attorneys representing owners recommend deleting the arbitration article from the agreement. Although such advice is sound, arbitration offers some advantages in the resolution of some disputes that may arise between a school district and its architect. Therefore, school districts may wish to consider whether to permit voluntary, as opposed to mandatory, arbitration or whether to compel arbitration of only certain defined disputes, such as those where the claims total less than $250,000. Alternatively, mandatory arbitration may be considered to be appropriate only with respect to small projects, i.e., those under a specified dollar amount, such as $200,000. Where the parties do agree to arbitration, they should provide for limited discovery, such as discovery under the Federal Rules of Civil Procedure for a period of sixty (60) days from the date of filing the claim in arbitration. The limitation on the number of days prevents an architect with a deep pocket from keeping a school district in arbitration for an indefinite period of time.

Where arbitration is permitted or required, the agreement should contain provisions addressing the issue of joinder of necessary parties. The standard form of agreement does not permit the joinder of necessary parties to the dispute, such as the contractor or subcontractors. Similarly, the General Conditions of the Owner-Contractor Agreement do not permit joinder of all parties who may be appropriate. Unless joinder is permitted or required, school districts will be confronted with the possibility of multiple arbitration proceedings and inconsistent decisions. Therefore, if arbitration is permitted or required, a provision allowing or requiring joinder should be included in the contract and should be required in all the contracts associated with the project. Where arbitration is not permitted, provisions as to joinder are unnecessary.

SUGGESTED SUBSTITUTION: Alternative #1

7.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof [shall] may be subject to and decided by arbitration [in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in

effect unless the parties mutually agree otherwise]if and as agreed to by the parties as evidenced by written consent to such arbitration. If the parties agree to submit any dispute to arbitration, each shall have the right to discovery pursuant to the Federal Rules of Civil Procedure for a period of sixty (60) days from the date of filing the claim in arbitration.

Where the foregoing alternative is used, paragraphs 7.2, 7.3 and 7.4 of the standard form agreement should be deleted in their entirety.

SUGGESTED SUBSTITUTION: Alternative #2

7.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof where the amount in controversy has a value less than $250,000 shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Association Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. Where the parties proceed to arbitration under this provision, the arbitrator(s) shall have no authority to make any award in excess of $250,000 unless the parties mutually agree otherwise in writing. With respect to any dispute properly submitted to arbitration under this provision, the parties may invoke pretrial discovery pursuant to the Federal Rules of Civil Procedure for a period of sixty (60) days from the date of filing the claim in arbitration.

SUGGESTED ADDITION:

7.5 This agreement to arbitrate shall include the obligation to include as part of any arbitration proceedings, by joinder or consolidation, all persons or entities not a party to this Agreement to the extent necessary for resolution of the matter in controversy. All contracts relating to this Project shall include this provision as part of any agreement to arbitrate. The foregoing agreement to arbitrate, including the obligation to arbitrate with an additional person or entity by joinder or consolidation shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. Joinder or consolidation of necessary or interested parties shall be a condition precedent to the obligation to arbitrate.

ARTICLE 8: TERMINATION, SUSPENSION OR ABANDONMENT

Paragraph 8.1 of the standard form of agreement authorizes either party to terminate the agreement for cause, provided seven days written notice is given to the other party. The agreement does not specifically require that the cause or reason for the termination be stated in writing. It should be required that the notice state the reason for the termination of the agreement.

SUGGESTED SUBSTITUTION:

8.1 This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Should either party exercise his right of termination, the written notice shall set forth the nature of the other party's breach.

Paragraph 8.2 of the agreement allows the architect to exercise certain rights to compensation should the project be suspended by the school district for more than 30 days. Since a 30 day suspension of a project is too short a period of time to warrant an adjustment in the architect's compensation, the parties should increase the time to at least 60 days and preferably 90 days.

SUGGESTED SUBSTITUTION:

8.2 If the Project is suspended by the Owner for more than [30] ninety (90) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

Paragraph 8.3 of the standard form of agreement allows the school district to terminate the

agreement if the school district permanently abandons the project. Where the agreement is terminated by the school district under conditions of abandonment of the project, the architect is entitled to be reimbursed for certain expenses and "Termination Expenses" that are in addition to the compensation earned by the architect. Termination expenses are a form of liquidated damages. Based upon the economic impact of termination of the contract upon the architect, such termination expenses are not unreasonable.

In addition to allowing school districts to terminate the agreement with the architect upon permanent abandonment of the project, it is recommended that the agreement be amended to allow the school district to terminate the agreement without cause even if the project is not abandoned, with the understanding that the school district would pay the termination expenses. There are several reasons for this. First, if the relationship between school district and architect sours, such a provision would allow the school district to substitute architects. Second, there may be a legitimate dispute as to whether the architect has breached the agreement; if the school district were to attempt to terminate the agreement for cause, it might face uninvited litigation and the possibility of a large compensatory damage award to the architect. Simply terminating the agreement without cause and paying the termination expenses may provide a better alternative. Finally, by permitting the termination of the agreement only for cause, the agreement may be interpreted by the courts as creating a property right in the architect which cannot be abrogated without due process. With such a possibility, school districts would have to proceed very cautiously if there were a need to terminate the agreement for cause in order to ensure that the architect's due process rights were not violated. By amending the standard form of agreement to permit termination of the agreement without cause, school districts would effectively eliminate any argument that the agreement created a property right in the architect.

SUGGESTED SUBSTITUTION: Alternative #1

8.3 This Agreement may be terminated <u>for any reason</u> by the Owner upon not less than seven <u>calendar</u> days' written notice to the Architect [in the event that the Project is permanently abandoned]. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.

SUGGESTED ADDITION: Alternative #2.

With this alternative, paragraph 8.3 should remain as is and a new paragraph should be added at 8.8.

<u>8.8 The Owner may terminate this Agreement at any time upon seven (7) days written notice to the Architect without cause. In such an event, Paragraph 8.7 shall apply. Where the Agreement is terminated by the Owner for cause and said cause is outlined in the written notice of termination as required in Paragraph 8.1, Paragraph 8.7 shall not apply and the Architect may be held liable for those actual damages suffered by the Owner due to the Architect's failure to perform as provided in this Agreement.</u>

Paragraph 8.7 defines the "Termination Expenses" to which the architect is entitled in the event of a termination of the agreement for reasons not the fault of the architect. Tantamount to a liquidated damages clause, it requires that the owner pay additional compensation to the architect. Some critics who believe the "Termination Expenses" are somewhat arbitrary and likely to be too high suggest that no additional fees are justified and that the architect is entitled only to all fees earned to date of termination (including corresponding profits) together with substantiated reimbursable costs and expenses. If such approach is taken, paragraph 8.7 should be deleted and paragraph 8.6 should be amended to delete reference to termination expenses.

SUGGESTED SUBSTITUTION:

8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due [and all Termination Expenses as defined in Paragraph 8.7].

The standard form of agreement contains no provision setting forth the obligation of the architect in the event the agreement is terminated by the school district. A provision should be added making

it clear that upon termination, the architect is to take no further action except as directed by the school district or as necessary to preserve the work.

SUGGESTED ADDITION:

8.9 Upon termination of this Agreement, the Architect shall perform no further services except as requested in writing by the Owner or as may be necessary to preserve the Work.

ARTICLE 9: MISCELLANEOUS PROVISIONS

Paragraph 9.1 states that the agreement will be governed by the law of the principal place of business of the architect. The provision should be changed to state that the law of the site of the project governs.

SUGGESTED SUBSTITUTION:

9.1 [Unless otherwise provided,] This Agreement shall be governed by the law of [the principal place of business of the Architect] _____.

Paragraph 9.3 of the standard form agreement provides that causes of action shall commence at certain times. Generally, it is the intent of the AIA to accelerate the time within which litigation must be commenced against the architect. It is recommended that the paragraph be deleted. First, it may limit the right of the school district to proceed against the architect for latent defects. Second, it may violate the law of some states that generally provides that a statute of limitations cannot run against a municipality.

The heightened awareness of the presence and problems of environmental hazards is reflected in paragraph 9.8. Paragraph 9.8 provides that the architect and his consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of hazardous materials such as asbestos and other toxic materials. It is suggested that there is no need for such a provision in general. More specifically, the provision would be inconsistent if the architect were being retained for the specific purpose of assisting the school district in remedying its asbestos problems. The paragraph should be replaced with the following:

SUGGESTED SUBSTITUTION:

9.8 [Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.] The Architect shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Architect discovers that such substances as described herein have been used or do exist in the Project, the Architect shall promptly notify the Owner in writing. When asbestos containing materials, polychlorinated biphenyl (PCB) or other toxic or hazardous substances are suspected or found in the course of the Project, the Owner shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action.

ARTICLE 10: PAYMENTS TO THE ARCHITECT

Paragraph 10.2 of the agreement defines the reimbursable expenses required to be paid by the school district in addition to the compensation that is due to the architect. Although always subject to negotiation, it is suggested that paragraph 10.2 be amended to exclude from reimbursable expenses the following:

1. Expenses of transportation in connection with the project;
2. Expenses of long distance telephone communications;
3. Cost of a certain number of reproductions of the drawings, specifications and other documents produced as part of the basic services;
4. Cost of the mandatory insurances that the school district should properly insist upon; and
5. Expenses of computer-aided design and drafting equipment.

SUGGESTED SUBSTITUTION:

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and and shall be payable provided they are approved in advance and in writing by the Owner. Reimbursable Expenses include actual expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses.

10.2.1.1 [Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long distance communications; and] Fees paid for securing approval of authorities having jurisdiction over the Project.

10.2.1.2 Expenses of reproductions, postage and handling of Drawings, Specifications and other documents, excluding reproductions for the office use of (1) the Architect, (2) the Architect's consultants, (3) the Owner and (4) up to twenty complete sets of Drawings and Specifications without cost for Contractors.

ARTICLE 11: BASIS OF COMPENSATION

Paragraph 11.1 of the standard form of agreement requires an initial payment. It is suggested that no initial payment be agreed to by the school district and that the word "None" be inserted in the space provided in the paragraph for the amount of the initial payment. If employment of the Architect is contingent upon successful passage of a bond issue, that contingency should also be stated.

Paragraph 11.2 provides for the basis of the compensation to the architect for his performance of basic services. Paragraph 11.2.2 designates the amount of the fee that will be earned by the architect as the project progresses through each phase. School districts should scrutinize the percentages that the architect seeks for each phase. Some architects may request a disproportionately high percentage of their fee during the early phases of the agreement. Not only would disproportionately high percentages during the early phases of the work impact on the cash flow, but may also result in unjustified fees to the architect should the project be suspended or abandoned or should the agreement with the architect be terminated with or without cause. The fees to be paid as the project progresses should be commensurate with the services performed.

Paragraph 11.3.3 of the agreement sets forth the amounts to be paid to the architect should the architect need to use the services of consultants, such as structural, mechanical and electrical engineers. The agreement generally states that the architect will be paid at a multiplier of what the consultant actually charges to the architect. The multiplier should be closely scrutinized to ensure that it is not excessive. Although multipliers of up to 1.5 are not uncommon, it is recommended that school districts negotiate for either no multiplier or a substantially lower multiplier. From the architect's perspective, the rationale of imposing a multiplier is because of the extra work that must be performed by the architect to coordinate the work of the consultant. The AIA has justified the use of multipliers by claiming that when the architect is incurring reimbursable expenses, the architect "is, in effect, extending credit to the owner." From the owner's perspective, to the extent administration of such consultants takes place to help the architect perform basic services, the architect is already being paid for the service. To the extent such efforts are not basic services, the hourly billing rate will be imposed, which includes profit. Where the architect insists upon a multiplier greater than 1.0, the architect may be willing to limit the amount to be paid to reflect the time spent in conjunction with the consultant at the normal hourly rate, not to exceed the amount determined by using the multiplier.

SUGGESTED SUBSTITUTION:

11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of _____ (___) times the amounts billed to the Architect for such services, or compensation earned by the Architect at the hourly rates set forth in Paragraph 11.3.2 for the Work performed in connection with the services of consultants plus the consultants' fee, whichever is less.

Paragraph 11.4.1 sets forth the amount at which reimbursable expenses will be billed to the school

district. Such expenses should be billed at one hundred percent of their cost to the architect and not at a multiple of their cost.

Paragraph 11.5.3 of the standard form agreement authorizes the architect to increase the rates and multiples set forth for additional services annually in accordance with salary review practices of the architect. School districts should object to such a provision and delete the paragraph from the agreement.

ARTICLE 12: OTHER CONDITIONS OR SERVICES

Although the AIA standard form of agreement is quite comprehensive, school districts should consider adding other provisions.

A paragraph should be added making it a responsibility of the architect as a part of basic services, to make a written record of all meetings, conferences, discussions and decisions made between or among the owner, architect and contractor during all phases of the project and concerning any material condition in the requirements, scope, performance and/or sequences of the work and provide a copy of such records to the owner and contractor upon request. This keeps the owner informed about the progress of construction on an ongoing basis.

SUGGESTED ADDITION:

> 12.1 It shall be the duty of the Architect throughout the term of this Agreement, as part of Basic Services, to make a prompt written record of all meetings, conferences, discussions and decisions made between and/or among the Owner, Architect, and Contractor during all phases of the Project and concerning any material condition in the requirements, scope, performance and/or sequence of the Work and to provide promptly a copy of such record to the Owner or the Contractor.

As mentioned previously, the form agreement contains no insurance requirements. Provisions should be added which require the architect to purchase and maintain in force and effect liability and other insurances that may be appropriate.

An area of particular concern is the architect's professional liability insurance. Such insurance is necessary to ensure the availability of a fund to pay any claims that result from the architect's negligence. However, there are several problems that must be addressed with respect to such insurance.

There is the practical problem of determining the amount or level of professional liability insurance required. Modest projects may justify only $250,000 of professional liability insurance while others may justify substantially more insurance. School districts should determine from both their insurance brokers and the architects from whom they will be soliciting proposals the level of professional liability insurance required for the project and the rationale for their recommendations.

Determining the proper level of insurance has consequences aside from establishing the size of the available insurance proceeds should any claims be made successfully against the architect. It could also affect the architectural firms qualified to make proposals. Some firms may be unable or unwilling to secure insurance at the levels established by the school district, especially with respect to small projects. Some architects carry no professional liability as a rule and will obtain such insurance only if its cost is directly passed on to the school district. The American Institute of Architects has reported that "approximately half of all architects do not maintain professional liability insurance." Other architects carry only modest amounts of insurance, $250,000 for example, and would be unwilling to increase the coverage for one project, unless the cost were passed on to the school district. Therefore, when establishing the level of professional liability insurance, school districts must do so recognizing that it may disqualify one or more otherwise qualified firms or that it may result in additional costs to the school district.

The second problem associated with professional liability insurance stems from the fact that such insurance is written on a "claims made" basis rather than on a "claims accrued" basis. A "claims made" policy is one that affords coverage for any covered claims that are made or asserted during the term of the policy, regardless of when the claim accrued. Claims that may accrue during the term of the policy, but which are not made or asserted until after the policy expires, are not covered. As a result, any professional liability insurance that is required and provided with respect to a school district project may be of no value if claims are made after the policy expires. A hypothetical situation can illustrate the nature of the problem.

Assume that a school district decides to construct an $8,000,000 addition to an existing school building and that it determines that $1,000,000 of professional liability insurance should be required of the architect. The architect regularly carries only $250,000 of such insurance and agrees to work on the project only after the school district agrees to pay the additional $15,000 in annual premiums that the increased insurance will cost the architect. The insurance is effective beginning January 1, 1990 and the term of the policy is one year. The project is completed during 1990 and no defects are discovered. Beginning on January 1, 1991, the architect's insurance reverts back to the level of $250,000. Two years later, a major structural defect is discovered and is attributable to the architect's negligence. The repair cost is $900,000. The architect has no assets of any significance and the available insurance is only $250,000. Even though the architect's negligence took place while $1,000,000 of insurance was in effect, because the claim was not made or asserted until after the expiration of the higher coverage, such coverage is not available to the school district.

Having identified the problem, the more critical question is how to solve it. The best among the several possibilities can only be determined by considering the nature and size of the project, comparative cost of the various options to both the architect and the school district, and the willingness of the architect to agree to a particular option.

One option would require the architect to continue coverage at specified levels for a specified period of time after the project is completed. Unless the architect regularly maintains that level of insurance, this option probably would not be acceptable to the architect unless the school district agreed to pay the premium. If this option is selected, suitable provisions must be agreed upon to prevent any premature lapse of the policy.

Another option may be to insist that the architect provide a clear letter of credit in the amount of the desired insurance and for the period of time deemed reasonable. Such a letter of credit probably would cost less than insurance, but unless the architect is financially secure with relatively liquid assets at levels substantially higher than the amount of credit, such a letter may not be obtainable.

SUGGESTED ADDITION:

12.2 The Architect agrees to maintain at no additional cost to the School District the following insurances until the termination of services of this Agreement:

a. workers' compensation coverage that meets or exceeds legal requirements;
b. automobile and truck liability coverage with a minimum combined single limit of liability of $500,000; and
c. architects and engineers professional liability insurance coverage with minimum limits of $500,000 per claim and/or occurrence prior to the start of construction and $1,000,000 limit per claim and/or occurrence following the start of construction.

With respect to any of the insurance policies provided by the Architect pursuant to this Agreement which are "claims made" policies, in the event at any time any such policies are canceled or not renewed, the Architect shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of this Agreement and which provides for retroactive coverage to the date of cancellation or nonrenewal to fill any gaps in coverage which may exist due to the cancellation or nonrenewal of the prior "claims made" policy(ies). With respect to all "claims made" policies which are renewed, The Architect shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of completion of the Project.

An architectural firm may be selected because of specific personnel in the firm. If the school district desires that the work be performed by specific personnel, a provision should be added setting forth the personnel who will be assigned to the project and the function of said personnel.

SUGGESTED ADDITION:

12.3 The Architect will utilize the following individuals to perform its Work of the Project:

_____

_____

Changes to the General Conditions of the Contract for Construction (AIA Document A201, 1987 Edition)

Any agreement between a school district and an architect will contain provisions describing the role of the parties during the construction phase of the project and vis-a-vis the contractor(s). Consequently, the agreement ultimately achieved between the school district and the contractor must be coordinated with the owner-architect agreement.

If the AIA forms are utilized, the owner-contractor agreement must similarly be coordinated with the owner-architect agreement. In their unaltered form, the AIA documents are coordinated. However, to the extent that changes and modifications are made to the Standard Form of Agreement Between Owner and Architect (AIA Document B141, 1987 Edition), corresponding changes must be made to the General Conditions of the Contract for Construction (AIA Document A201, 1987 Edition).

The suggestions for changes to the General Conditions that follow are made in light of the suggested changes to the owner-architect agreement as set forth above. Therefore, the following may be appropriate and are recommended only if the corresponding changes are made to the owner-architect agreement.

It is beyond the scope of this monograph to analyze the General Conditions in detail or to recommend alterations unrelated to the architect's role with respect to the project. Instead, only those provisions of the General Conditions which relate to the architect's role and to the owner-architect agreement will be referenced and recommendations for change will be made only to the extent necessary to coordinate those provisions with recommended changes to the owner-architect agreement. In addition, because the rationale for the changes to the General Conditions tracks the rationale for the corresponding changes to the owner-architect agreement, the rationale will not be repeated in this section of the monograph. Instead, the recommended substitution alone will be provided. The numbers correspond to the numbers of those paragraphs of the General Conditions of the Contract for Construction (AIA Document A201, 1987 Edition) that need modification in order to be coordinated with the owner-architect agreement.

SUGGESTED SUBSTITUTION: Alternative #1

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's services through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and [unless otherwise indicated], <u>except as otherwise provided in the Agreement between the Owner and the Architect,</u> the Architect shall be deemed author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use [solely] with respect to this Project, <u>the Owner's use and occupancy of the Project, and for additions to the Project.</u> They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor [or for additions to this Project outside the scope of the Work] without the specific written consent of the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors and material and equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

SUGGESTED SUBSTITUTION: Alternative #2

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect[, and unless otherwise indicated the Architect shall be deemed the author of them]. The Owner shall be deemed to be the owner of all Drawings, Specifications and other documents prepared by the Architect with respect to this Project and will retain all common law, statutory and other reserved rights, in addition to copyright. All copies of them except the Contractor's record set, shall be returned or suitably accounted for to the Owner, [Architect] upon request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use by the Contractor solely with respect to this Project. They are not to be used by the Contractor, any Subcontractor, or any Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner [and Architect]. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's [Architect's] copyright or other reserved rights.

SUGGESTED ADDITION:

1.3.1.1 The Contractor shall certify, when available, the accuracy of a set of reproducible record drawings prepared by the Architect showing significant changes in the Work made during construction.

SUGGESTED SUBSTITUTION:

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and the Agreement between the Owner and the Architect, and will be the Owner's representative (1) during construction, (2) until final payment is [due] made and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner [only] to the extent provided in the Contract Documents and allowed by law, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

SUGGESTED SUBSTITUTION:

4.2.2 The Architect shall visit the site [at intervals] not less than once per week while Work is in progress and as often as necessary and appropriate to the stage of construction [to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on site inspections to check quality or quantity of the Work.](with particular emphasis on structural work) to inspect the site and Work, to familiarize himself with the progress and quality of the Work, and to determine for the Owner's benefit and protection if the Work is proceeding in accordance with the intent of the Contract Documents and the construction schedule. The Architect shall use reasonable care to guard the Owner against defects and deficiencies in the Work and the Contractor's failure to carry out the Work in accordance with the Contract Documents and

the construction schedule. On the basis of onsite observations and inspections as an architect, the Architect will keep the Owner informed of progress of the Work [, and will endeavor to guard the Owner against defects and deficiencies in the Work].

SUGGESTED SUBSTITUTION:

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work [, since these are solely the Contractor's responsibility as provided in Paragraph 3.3] except to ensure that the Work is in accordance with the Contract Documents all as set forth in Paragraph 4.2.2 hereof. Except as provided elsewhere in this Agreement or in the Agreement between the Owner and the Architect, the Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. Notwithstanding the foregoing, in the event the Architect becomes aware that the Contractor is using means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work which create a risk to persons or property or in violation of customary safety practices, OSHA standards, or Department of Labor and Industry regulations, the Architect shall have authority to take appropriate action, including, if necessary, shutting down the Project. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents, unless the Architect knew or should have known that the Contractor was failing to carry out the Work in accordance with the Contract Documents.

SUGGESTED SUBSTITUTION:

4.2.4 [Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized,] The Owner and Contractor shall [endeavor to] communicate through the Architect except (1) as may be otherwise provided in the Contract Documents; (2) when direct communications have been specifically authorized; or (3) when such communication has been attempted and could not reasonably be accomplished in a timely manner. Where direct communication between Owner and Contractor has occurred, the Owner and Contractor shall promptly and jointly document the nature and results of the communication as well as the reason for the direct communication and shall provide a copy of said documentation to the Architect. Communications by and with the Architect's consultant shall be through the Architect. Communications by and with the Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. The Architect will conduct regular site meetings and issue reports. Each Contractor (or major Subcontractor) shall attend and report on the status of his work. The primary purpose of these meetings is to observe and coordinate the execution of the Work. The reports issued shall be the official record and, unless subsequently objected to, changed or modified in any way, shall constitute written notice, direction, decisions, etc. relating to the Work to all concerned. Reports will be issued to the Owner, and to all Contractors who shall be responsible for advising their Subcontractors and material suppliers of pertinent directions and decisions.

SUGGESTED SUBSTITUTION:

4.2.13 As to the Contractor, the Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

SUGGESTED SUBSTITUTION:

4.3.1 Definition. A Claim is a demand or assertion by [one of the parties] the Owner or Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term

"Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

There are various provisions in the General Conditions of the Contract for Construction (AIA Document A201, 1987 Edition) that reference arbitration. If arbitration is not permitted under the owner-architect agreement and not to be permitted under the owner-contractor agreement, all references to arbitration should be deleted. The following suggested substitutions are appropriate only if arbitration is not sanctioned under the agreements.

SUGGESTED SUBSTITUTION:

4.3.2 Decision of Architect. Claims, including those alleging an error or omission, by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to [arbitration or] litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to [arbitration or] litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

SUGGESTED SUBSTITUTION:

4.3.4 Continuing Contract Performance. Pending final resolution of a Claim [including arbitration], unless otherwise agreed in writing the Contractor, shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

SUGGESTED SUBSTITUTION:

4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to [arbitration] litigation. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

If arbitration is not to be permitted, all of paragraph 4.5 of the General Conditions of the Contract for Construction (AIA Document A201, 1987 Edition) should be deleted. Where arbitration is to be allowed, a provision should be added which requires joinder of all necessary parties.

SUGGESTED ADDITION:

4.5.8 This agreement to arbitrate shall include the obligation to include as part of any arbitration proceedings, by joinder or consolidation, all person or entities not a party to this agreement to the extent necessary for resolution of the matter in controversy. All contracts relating to this Project shall include this provision as part of an agreement to arbitrate. The foregoing agreement to arbitrate, including the obligation to arbitrate with an additional person or entity by joinder or consolidation, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. Joinder or consolidation of necessary or interested parties shall be a precondition to the obligation to arbitrate.

Form of Agreement

The final suggestion concerns the form of the agreement. Although it is perfectly permissible to produce a totally revised agreement incorporating the various suggestions noted previously, it is suggested that the school district mark on the face of the AIA standard form of agreement those paragraphs that are being amended or deleted and that a "Rider" be attached to the standard form of agreement setting forth the deletions, amendments and additions to the contract. In this way, the architect will readily know which language in the standard form agreement is being changed.

The following "Sample Rider" is consistent with the recommendations contained in the foregoing narrative. However, it must be emphasized that it may not be complete or adequate for individual projects. It must be thoroughly evaluated to determine its suitability to the project to which it will apply.

The following "Sample Rider," as well as the preceding narrative is published with the understanding that the publisher and authors are not engaged in furnishing any legal or other professional advice. Although prepared by attorneys, this monograph should not be used as a substitute for professional services in specific situations. If legal advice or other expert assistance is required, the services of a specialist should be sought. Non-attorneys are cautioned against using these materials on behalf of others or engaging in conduct which might be considered the unauthorized practice of law.

Sample Rider

This rider is attached to and modifies the Standard Form of Agreement executed by the parties the ____ day of ____, 199__. The provisions of this Rider supersede and, where applicable, supplant the corresponding numbered provisions of the Standard Form of Agreement to which it is appended. All terms in this Rider have the same definition as provided in the Standard Form of Agreement to which it is appended.

1.1.2 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted in writing by mutual agreement of the parties as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

1.4 ADD THE FOLLOWING:

1.4 The Architect will follow the highest standards of the profession in performing all services under this Agreement.

2.1.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services and any other engineering services necessary to produce a reasonably complete and accurate set of Construction Documents, as described in Paragraph 2.4, except those engineering services provided by the Owner as set forth in Paragraph 4.6.1.

2.2.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.2.1 The Architect shall review and analyze the program furnished by the Owner to ascertain the requirements of the Project, shall arrive at a mutual understanding of such requirements with the Owner, shall commit such understanding to writing, and shall furnish a copy to the Owner for approval before proceeding with preliminary designs.

2.2.4 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, (1) for approval by the Owner, Schematic Design Documents con-

sisting of Drawings and other documents illustrating the scale and relationship of the Project components and (2) for review by the Owner, a preliminary estimate of the "Construction Cost" as that phrase is defined in Paragraph 5.1.2.3 of this Agreement. The Design Documents shall comply with all applicable laws, statutes, ordinances, codes, orders, rules, and regulations in force as of the date of the development of the documents. Approval by the Owner shall be deemed to be approval of the concept though not the means, techniques or particular material recommended by the Architect.

2.3.3 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.3.3 The Architect shall submit to the Owner an analysis of the total estimated energy necessary to operate the Project properly during a normal or average year. This analysis shall include the estimated energy necessary to heat, cool and light the Project and to operate the equipment essential to both the Project and the Program. The total annual estimated energy need shall then be translated into cost estimates by type of energy based on current cost of each type of energy, i.e., electricity, coal, oil, natural gas, LP gas, etc., for each facility of the Project. The Owner and Architect agree that the actual energy cost and the estimated energy cost may vary due to the Owner's usage of the energy system, weather conditions and increases in energy costs. The Architect shall not be responsible or held legally liable for reasonable variations between the estimated and actual energy costs.

2.4.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements of the Project, including, but not limited to, the work required for the architectural, structural, mechanical, electrical, plumbing, service-connected equipment, and site work, and the necessary general conditions of the contract. The Architect shall provide the services of professional structural, mechanical, civil, electrical and other engineers, qualified by training and experience in their respective fields, as needed, to address the requirements of the Project; shall submit a list of the names of the engineers to be employed by the Architect to the Owner, in advance, for the Owner's review and approval, which approval shall not be unreasonably withheld, and shall require such professional engineers to place their seal, name and signature on the Drawings and Specifications prepared by them. Said Construction Documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations. Approval by the Owner shall not constitute approval of the means, techniques or particular material recommended by the Architect for the Project.

2.4.2 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.4.2 The Architect, after consultation with the Owner, shall prepare the necessary bidding information, bidding forms, the Conditions of the Contract, a final estimate of the "Construction Cost" as defined in Paragraph 5.1.2.3 of the Agreement, and the form of Agreement between the Owner and Contractor, subject to the review and approval of the Owner's legal counsel.

2.4.4 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.4.4 The Architect shall be responsible, with the assistance of the Owner, for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall be responsible for making such changes in the Construction Documents as may be suggested by said governmental authorities at his expense when instructed to do so by the Owner.

2.4.5 ADD THE FOLLOWING:

2.4.5 The Architect shall include in the bidding information, plans or specifications, a requirement that the Contractor(s) provide operation manuals and adequate training for the Owner in the operation of mechanical, electrical, heating and air conditioning systems installed by the contractor(s).

2.5.2 ADD THE FOLLOWING:

2.5.2 In the event the lowest responsible bid (or bids) exceeds either the funds appropriated for the

Project or the final estimates provided by the Architect pursuant to Paragraph 2.4.2 of this Agreement, the Architect, in consultation with and at the direction of the Owner, shall provide such modification in the Contract Documents as shall be necessary to bring the cost of the Project within the Project's budget as established by the Owner or the Architect's final estimates, as the Owner shall determine.

2.6.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.1 Subject to the time limitations set forth in Paragraph 11.5.1, the Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the awarding of any Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment to all Contractors, issuance of a certificate of occupancy, or submission of record drawings unless extended under the terms of Paragraph 10.3.3.

2.6.2 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, as may be amended by the Owner.

2.6.3 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect and notice to the Contractor.

2.6.4 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner. Instructions to the Contractor(s) shall be forwarded through the Architect. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.5 The Architect shall visit the site not less than once per week while work is in progress, and as often as necessary and appropriate to the stage of construction (with particular emphasis on structural work) to inspect the site and Work; to familiarize himself with the progress and quality of the Work; and to determine for the Owner's benefit and protection if the Work is proceeding in accordance with the intent of the Contract Documents and the construction schedule. The Architect shall attend all construction progress meetings in conjunction with or in addition to visiting the site in satisfaction of other responsibilities. The Architect shall use reasonable care to guard the Owner against defects and deficiencies in the Work and the Contractor's failure to carry out the Work in accordance with the Contract Documents and the construction schedule. On the basis of his on-site observations and inspections as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall give prompt notice to the Owner in writing of any major or material deviations from the Contract Documents in the Work. The Architect shall provide services made necessary by major defect or deficiencies in the Work of the Contractor which through reasonable care should have been discovered by the Architect and promptly reported to the Owner and Contractor(s) but which the Architect failed to discover and/or report.

2.6.6 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work; except to ensure that the Work is in accordance with the Contract Documents all as set forth in Paragraph 2.6.4 hereof. Except as provided in this Agreement, the Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents and shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

2.6.6.1 ADD THE FOLLOWING:

2.6.6.1 The Architect shall provide services made necessary by major defects or deficiencies in the Work of the Contractor(s) or their agents or employees which through reasonable care the Architect should have discovered and promptly reported to the Owner but failed so to do. In addition, the Architect represents that he will follow the highest standards of the profession in performing all services under this Agreement. Any defective designs or Specifications furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the Owner's rights.

2.6.7 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.7 Both the Owner and the Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.8 The Owner and Contractor shall communicate through the Architect; except (1) as may otherwise be provided in the Contract Documents, (2) when direct communications have been specifically authorized, or (3) when such communication has been attempted and could not reasonably be accomplished in a timely manner in consideration of the requirements of the Project. Where direct communication between Owner and Contractor has occurred, the Owner and Contractor shall promptly and jointly document the nature and result of the communication as well as the reason for the direct communication and shall provide a copy of said document to the Architect. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.9 Based on the Architect's observations, inspections of the Work, and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor. Said review and certification shall be completed within ____ days of the Architect's receipt of the Application.

2.6.10 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's inspections and observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents and that the Work has been performed in a good and workmanlike fashion. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has reviewed construction means, methods, techniques, sequences or procedures or ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.11 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.11 Where Work does not conform to the Contract Documents, the Architect shall promptly notify the Owner of the Architect's intent to reject such Work and shall reject nonconforming Work unless the Owner stops the Architect in writing within twenty-four (24) hours of being notified. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. Where such additional inspection and testing is to be at additional

cost to the Owner, such additional inspection and testing is to be required by the Architect only upon advance notice and approval by the Owner. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

2.6.12 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents and all applicable laws, statutes, ordinances, codes, rules and regulations. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.15 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.15 The Architect shall interpret and decide matters concerning performance of the Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

2.6.16 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by the Contractor and shall not be liable for results of interpretations or decisions so rendered in good faith and without negligence.

2.6.17 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

2.6.17 The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.

2.6.19 DELETE

2.6.20 ADD THE FOLLOWING:

2.6.20 The Architect shall provide services to investigate existing conditions or facilities or to make measured Drawings thereof, or to verify the accuracy of Drawings or other information furnished by the Owner.

2.6.21 ADD THE FOLLOWING:

2.6.21 The Architect shall provide coordination of construction performed by separate Contractors or by the Owner's own forces and coordination of services in connection with construction performed and equipment supplied by the Owner, including establishing and conducting a regular schedule of monthly meetings between Contractors and the Owner. Such monthly meetings shall be held throughout the entire Construction Phase of the Project and shall be for the primary purpose of assessing the progress of the Work of each Contrac-

tor and recommending to the Owner such remedial actions as are necessary to ensure required progress and completion in accordance with the construction schedule and within contract time. The Architect shall submit to the Owner and to the Contractors a full report of each such meeting as soon after the meeting as is practical.

2.6.22 ADD THE FOLLOWING:

2.6.22 The Architect shall be prepared to serve and shall serve when requested by the Owner as a witness in connection with any public hearing, arbitration proceeding, legal proceeding or administrative law proceeding to which the Owner or the Architect is a party concerning the Project as part of his Basic Services.

2.6.23 ADD THE FOLLOWING:

2.6.23 The Architect shall prepare or provide a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, Drawings and other data furnished by the Contractor(s) to the Architect including, but not limited to, the location of water, sewer, telephone, electric, gas and any other utility lines. Both the Architect and Contractor shall certify these Drawings as accurate.

2.6.24 ADD THE FOLLOWING:

2.6.24 The Architect shall provide services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

2.6.25 ADD THE FOLLOWING:

2.6.25 The Architect shall provide services in evaluating claims submitted by the Contractor or others in connection with the Work.

2.6.26 ADD THE FOLLOWING:

2.6.26 The Architect shall provide analysis of the Owner's needs and program the requirements of the Project.

2.6.27 ADD THE FOLLOWING:

2.6.27 The Architect shall provide services to investigate existing conditions or facilities or to make measured Drawings thereof.

2.6.28 ADD THE FOLLOWING:

2.6.28 The Architect shall provide services to verify the accuracy of Drawings or other information furnished by the Owner.

2.6.29 ADD THE FOLLOWING:

2.6.29 The Architect shall provide coordination of construction performed by separate Contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

2.6.30 ADD THE FOLLOWING:

2.6.30 The Architect shall provide detailed estimates of Construction Cost.

2.6.31 ADD THE FOLLOWING:

2.6.31 The Architect shall prepare a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, Drawings and other data furnished by the Contractor to the Architect.

3.1.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified elsewhere in this Agreement as being included in Basic Services, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized in advance in writing by the Owner. If, in the opinion of the Architect, services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall advise the Owner of the need for those services in writing prior to commencing such services. If the

Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services. If, however, services described under Paragraph 3.3 are required due to circumstances within the control of the Architect, such services shall be provided as a part of Basic Services. Notwithstanding any provision to the contrary, no compensation shall be paid to the Architect for additional services that became necessary as a result of the fault or negligence of the Architect or his agents or employees.

3.2.3 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

3.2.3 Through the observations by such Project Representatives, the Architect shall provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such Project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

3.3.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

3.3.1 Making material revisions in Drawings, Specifications or other documents when such revisions are:

1. inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
2. required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
3. due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5; provided, however, that where said services are made necessary because of the significant increase in the size, quality, or complexity of the Project which results in a significant increase in the Construction Cost and, therefore, the Architect's fee for Basic Services, which fee is commensurate with the services required of the Architect, this provision shall not apply.

3.3.3 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, and providing other services in connection with Change Orders and Construction Change Directives when the adjustment in the basic compensation resulting from the adjusted Construction Cost is not commensurate with the services required of the Architect.

3.3.4 DELETE

3.3.8 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

3.3.8 Providing services in connection with an arbitration proceeding or legal proceeding except where the Owner or Architect is a party thereto.

3.4.1 DELETE

3.4.6 DELETE

3.4.7 DELETE

3.4.8 DELETE

3.4.10 DELETE

3.4.16 DELETE

3.4.18 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

3.4.18 Providing services after the issuance to the Owner by the Architect of the final Certificate for Payment, except as provided by Subparagraph 11.5.1.

4.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

4.1 The Owner shall, with the Architect's assistance, identify requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.10 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, but the Owner's failure or omission to do so shall not relieve the Architect of his responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation.

5.1.2.1 ADD THE FOLLOWING:

5.1.2.1 During the Schematic Design, Design Development and Construction Document Phases, Construction Cost shall be determined by the Owner's budget for the Project.

5.1.2.2 ADD THE FOLLOWING:

5.1.2.2 During the Bidding and Negotiation Phase, Construction Cost shall be determined by the lowest responsible bid or bids.

5.1.2.3 ADD THE FOLLOWING:

5.1.2.3 During the Construction Phase, Construction Cost shall be determined by the Contract Sum as stated in the Owner-Contractor Agreement, as amended by any Change Orders formally approved by the Owner and Contractor.

6.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are the property of the Owner who shall be vested with all common law, statutory and other reserved rights; provided, however, that the Owner will indemnify and hold the Architect harmless in the event the Owner uses such documents for purposes other than this Project.

7.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

7.1 Claims, disputes or other matters in question between the parties to this agreement arising out of or relating to this Agreement or breach thereof may be subject to and decided by arbitration if and as agreed to by the parties. If the parties agree to submit any dispute to arbitration, each shall have the right to discovery pursuant to the Federal Rules of Civil Procedure for a period of sixty (60) days from the date of filing the claim in arbitration.

7.2 DELETE

7.3 DELETE

7.4 DELETE

7.5 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

7.5 This agreement to arbitrate shall include the obligation to include as part of any arbitration proceedings, by joinder or consolidation, all persons or entities not a party to this Agreement to the extent necessary for resolution of the matter in controversy. All contracts relating to this Project shall include this provision as part of any agreement to arbitrate. The foregoing agreement to arbitrate, including the obligation to arbitrate with an additional person or entity by joinder or consolidation shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. Joinder or consolidation of necessary or interested parties shall be a condition precedent to the obligation to arbitrate.

8.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

8.1 This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Should either party exercise his right of termination, the written notice shall set forth the nature of the other party's breach.

8.2 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

8.2 If the Project is suspended by the Owner for more than ninety (90) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

8.3 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

8.3 This Agreement may be terminated for any reason by the Owner upon not less than seven calendar days written notice to the Architect. If the Project is abandoned by the Owner for more than ninety (90) consecutive days, the Architect may terminate this Agreement by giving written notice.

8.9 ADD THE FOLLOWING:

8.9 Upon termination of this Agreement, the Architect shall perform no further services except as requested in writing by the Owner or as may be necessary to preserve the Work.

9.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

9.1 This Agreement shall be governed by the law of _____.

9.3 DELETE

9.8 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

9.8 The Architect shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Architect discovers that such substances as described herein have been used or do exist in the Project, the Architect shall promptly notify the Owner in writing. When asbestos containing materials, polychlorinated biphenyl (PCB) or other toxic or hazardous substances are suspected or found in the course of the Project, the Owner shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action.

10.2.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and shall be payable provided they are approved in advance and in writing by the Owner. Reimbursable Expenses include actual expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses.

10.2.1.1 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

10.2.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project.

10.2.1.2 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

10.2.1.2 Expenses of reproductions, postage and handling of Drawings, Specifications and other documents, excluding reproductions for the office use of (1) the Architect, (2) the Architect's consultants, (3) the Owner and (4) up to twenty complete sets of Drawings and Specifications without cost for Contractors.

10.2.1.5 DELETE

10.2.1.6 DELETE

11.3.3 DELETE AND SUBSTITUTE WITH THE FOLLOWING:

11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiplier of _____ (____) times the amounts billed to the Architect for such services, or compensation earned by the Architect at the hourly rates set forth in Paragraph 11.3.2 for the Work performed in connection with the services of consultants plus the consultants' fee, whichever is less.

11.5.3 DELETE

12.1 ADD THE FOLLOWING:

12.1 It shall be the duty of the Architect throughout the term of this Agreement, as part of Basic Services, to make a prompt written record of all meetings, conferences, discussions and decisions made between and/or among the Owner, Architect, and Contractor during all phases of the Project and concerning any material condition in the requirements, scope, performance and/or sequence of the Work and to provide promptly a copy of such record to the Owner or the Contractor.

12.2 ADD THE FOLLOWING:

12.2 The Architect agrees to maintain at no additional cost to the School District the following insurances until the termination of services of this Agreement:

a. worker's compensation coverage that meets or exceeds legal requirements;
b. automobile and truck liability coverage with a minimum combined single limit of liability of $500,000; and
c. architects and engineers professional liability insurance coverage with minimum limits of $500,000 per claim and/or occurrence prior to the start of construction and $1,000,000 limit per claim and/or occurrence following the start of construction.

With respect to any of the insurance policies provided by the Architect pursuant to this Agreement which are "claims made" policies, in the event at any time any such policies are canceled or not renewed, the Architect shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of this Agreement and which provides for retroactive coverage to the date of cancellation or nonrenewal to fill any gaps in coverage which may exist due to the cancellation or nonrenewal of the prior "claims made" policy(ies). With respect to all "claims made" policies which are renewed, the Architect shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of completion of the Project.

12.3 ADD THE FOLLOWING:

12.3 The Architect will utilize the following individuals to perform its Work of the Project:

_____

_____

_____

THE NATIONAL SCHOOL BOARDS ASSOCIATION'S COUNCIL OF SCHOOL ATTORNEYS

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The NSBA Council of School Attorneys is the only national network of school law practitioners providing members information and practical assistance on school law trends. Nearly 3,000 attorneys, representing school districts of all sizes, benefit from Council activities and programs. The Council's unique program:

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School Discipline Polices & Procedures: A Practical Guide (Revised Edition–April 1990) written by Kelly Frels, Jeffrey J. Horner and Merri Schneider–Vogel. This new edition of the Council's 1984 publication explores the most recent litigation involving the administration of school discipline policies and procedures. The publication focuses on: policy development, general procedures, hearing process, appeals, special problems and discipline of handicapped students. 40 pages. ISBN 0–88364–154–2.

School Finance Litigation: A Renewed Impulse for Reforms? (April 1991) written by Albertina Bailey. This publication traces the course of school finance litigation over the past two decades and highlights the shift away from federal constitutional challenges to claims asserting violations of the educational article of state constitutions. ISBN 0–88364–132–1.

Sexual Harassment in the Schools: Preventing and Defending Against Claims (December 1990) edited by Naomi Gittins. This comprehensive monograph reviews the most current laws affecting sexual harassment of students and employees in the school setting. You'll receive recent EEOC guidelines and regulations, sample policies, as well as practical information to help you develop your own preventive policies. Approx. 110 pages. ISBN 0–88364–157–7.

School Law Library Filing System – Vinyl 3–ring binder with printed subject tabs. Organize your issues of "Inquiry & Analysis," "A Word On..." and articles from *School Law in Review* by subject area

School Law in Review 1991 — This digest of papers presented at the 1991 Annual School Law Seminar includes the following topics: Off-Campus Student Conduct, Dealing with Student Gangs, Student Speech, Student Searches, Section 504 Claims, The Placement Continuum under EAHCA and Due Process, Attorneys' Fees in Special Education Cases, Section 1983, Negligent Hiring and Retention, Handling Sexual Misconduct Charges — Investigation & Trial, Bargaining Site Based Management, Grievance Arbitration, Negotiating with Noninstructional Employees, Bargaining Health Insurance Issues. ISBN 0–88364–131–3.

Religion, Education and the U.S. Constitution (May 1990) edited by Naomi Gittins. This monograph is a compilation of nine articles written by Council members and focuses on the affect of the establishment and free exercise clauses of the first amendment and the constitutional issues surrounding accommodating employee religous beliefs, wearing of religious garb, curriculum content, school prayer/moment of silence, holiday observances, equal access, home school and much more. 112 pages. ISBN 0–88364–153–4.

Contracting with Architects: A School District's Perspective (February 1991) written by the Council's AIA Contract Committee chaired by Michael I. Levin. This comprehensive monograph supports the school district's perspective on working with architects. You'll learn proven methods for selecting an architect, understand the nature of the relationship between the architect and the school district, and gain strategic tips for contract negotiation. This publication also includes a detailed analysis of the AIA Owner-Architect Agreement and suggests substitutions for some of the contract language. ISBN 0–88364–159-3.

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004	"Student Injuries—Liability for Personal Injuries Occurring During Extracurricular Activities" (45 minutes) Donald B. Bowerman, Hibbard, Caldwell, Bowerman & Schultz, Oregon City, OR		$14.50	$17.50	
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